

D-1-GN-09-004104

Filed
09 December 3 P3:04
Amalia Rodriguez-Mendoza
District Clerk
Travis District

CAUSE NO. _____

C.D. HENDERSON CONSTRUCTION
SERVICES, LTD.*Plaintiff,*

V.

SCOTTSDALE INSURANCE COMPANY,

Defendant

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200TH

~~201ST~~

JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW C.D. HENDERSON CONSTRUCTION SERVICES, LTD. and file this Original Petition against SCOTTSDALE INSURANCE COMPANY and would respectfully show this Court the following:

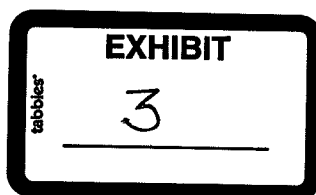
I.DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Texas Rule of Civil Procedure 190.3 (Level 2).

II.THE PARTIES

2. Plaintiff C.D. HENDERSON CONSTRUCTION SERVICES, LTD. ("C.D. Henderson") is a Texas company with its principal place of business in Dallas County, Texas.

3. Defendant SCOTTSDALE INSURANCE COMPANY ("Scottsdale") is an insurance company incorporated in Ohio with its principal place of business in Ohio. Defendant Scottsdale is a commercial lines insurance company that issues policies in Texas as a non-admitted carrier through the "surplus lines" provisions of Texas law. Defendant Scottsdale can



be served with a copy of this Original Petition by serving the Commissioner of Insurance, Texas Department of Insurance, 333 Guadalupe St., Austin, Texas 78701.

III.
JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction of this cause of action because it involves an amount in controversy in excess of the minimum jurisdictional limits of this Court.

5. Venue is proper in Travis County under Texas Civil Practice and Remedies Code Section 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to the claim occurred within Travis County, Texas.

IV.
FACTUAL BACKGROUND

6. On or about July 19, 2005, Plaintiff C.D. Henderson filed a lawsuit against Capital Metropolitan Transportation Authority ("Capital Metro") under Cause No. GN5-02486: *C.D. Henderson Construction Services, Ltd. v. Capital Metropolitan Transportation Authority*; in the 250th Judicial District Court of Travis County, Texas (the "Underlying Lawsuit"), alleging a claim for breach of contract arising out of C.D. Henderson's construction of Capital Metro's new facility located at 9313 and 9315 Old McNeil Road, Austin, Texas 78758 (the "Project").

7. Thereafter, on or about February 26, 2007, Capital Metro filed a counterclaim against C.D. Henderson in the Underlying Lawsuit, alleging various claims for defective construction and resultant damages and delays. Capital Metro has filed several amended counterclaims since that date. Capital Metro's claims against C.D. Henderson include claims for damages arising out of the work of several of C.D. Henderson's subcontractors, including Austin Capitol Concrete, Inc.



8. Defendant Scottsdale issued a commercial general liability insurance policy to Austin Capitol Concrete, Inc., bearing policy number CLS1103598 and effective February 14, 2005 to February 14, 2006 (the "Scottsdale Policy").

9. Pursuant to C.D. Henderson's contract with Austin Capitol Concrete, the latter agreed to name C.D. Henderson as an additional insured under its commercial general liability policies, including, but not limited to, the Scottsdale Policy.

10. Accordingly, C.D. Henderson tendered the Capital Metro claims to Defendant Scottsdale and requested a defense and indemnity. C.D. Henderson also tendered the claims to other carriers for Austin Capitol Concrete, as well as to the carriers for C.D. Henderson's other subcontractors on the Project.

11. On or about March 31, 2009, Scottsdale issued a letter to C.D. Henderson in which it agreed to defend C.D. Henderson in the Underlying Lawsuit pursuant to a reservation of rights. Scottsdale requested that C.D. Henderson provide it with contact information for any other carriers that had agreed to provide a defense to C.D. Henderson so that the various carriers could coordinate the defense. On several occasions following receipt of Scottsdale's March 31, 2009 letter, C.D. Henderson provided Scottsdale with the information necessary for that coordination of the defense.

12. Nevertheless, to date, despite repeated requests by C.D. Henderson and repeated promises from Scottsdale, Scottsdale has not contributed at all to C.D. Henderson's defense in the Underlying Lawsuit.

**V.
CAUSES OF ACTION**

13. Each of the foregoing paragraphs is incorporated by reference in the following causes of action as though fully set forth herein.



A. DECLARATORY JUDGMENT

14. An actual controversy exists between C.D. Henderson on one hand, and Scottsdale on the other hand, as to the scope of coverage provided to C.D. Henderson via the terms and conditions of the Scottsdale Policy.

15. Pursuant to the Texas Declaratory Judgment Act, C.D. Henderson seeks a declaration that Scottsdale owes a defense to C.D. Henderson in connection with the Underlying Lawsuit.

B. BREACH OF CONTRACT

16. The Scottsdale Policy sets forth contractual obligations on the part of Scottsdale to defend and indemnify its insureds, including additional insureds like C.D. Henderson, when claims are made against the insureds for property damage caused by an occurrence and where no exclusions operate to bar all coverage under the Scottsdale Policy.

17. Scottsdale has breached the Scottsdale Policy by failing to defend C.D. Henderson against the claims of Capital Metro in the Underlying Lawsuit.

C. PROMPT PAYMENT OF CLAIMS ACT

18. The failure of Scottsdale to promptly pay C.D. Henderson's defense costs after establishing that it was reasonably clear that coverage exists constitutes a violation of Article 542.051 *et seq.* of the Texas Insurance Code.

19. C.D. Henderson, therefore, in addition to its claim for damages, is entitled to an 18% penalty and attorneys' fees as set forth in Section 542.060 of the Texas Insurance Code.



D. ATTORNEYS' FEES

20. C.D. Henderson has engaged the undersigned attorneys to prosecute this lawsuit against Scottsdale and has agreed to pay reasonable attorneys' fees and expenses through trial and any appeal.

21. C.D. Henderson prays that it be awarded all reasonable attorneys' fees incurred in prosecuting the aforementioned causes of action through trial and any appeal pursuant to Section 38.001 of the Texas Civil Practices and Remedies Code. In addition and/or in the alternative, C.D. Henderson may be awarded attorneys' fees under the Texas Insurance Code.

VI.
CONDITIONS PRECEDENT

22. All conditions precedent to C.D. Henderson's right to recover under the Scottsdale Policy at issue have occurred or have been fully performed.

VII.
PRAYER

WHEREFORE, PREMISES CONSIDERED, C.D. Henderson Construction Services, Ltd. prays that, upon final hearing of the case, this Court declare and adjudge the contractual obligations of Scottsdale Insurance Company, that this Court declare and adjudge that C.D. Henderson recover all damages from and against Scottsdale that they may reasonably establish by a preponderance of the evidence, and that this Court award attorneys' fees through trial and any appeal, costs of court, pre-judgment interest, post-judgment interest, and such other and further relief, general or special, at law or in equity, to which C.D. Henderson may show itself to be justly entitled.



Respectfully submitted,

VISSER SHIDLOFSKY LLP

By /s/ Lee H. Shidlofsky
Lee H. Shidlofsky
State Bar No. 24002937
Douglas P. Skelley
State Bar No. 24056335
7200 N. MoPac Expressway, Suite 430
Austin, Texas 78731
Telephone: (512) 795-0600
Telecopier: (866) 232-8709
E-mail: lee@vsfirm.com
E-mail: doug@vsfirm.com

ATTORNEYS FOR PLAINTIFFS

I, ANA LIA RODRIGUEZ-MENDOZA, District Clerk,
Travis County, Texas, do hereby certify that this is
a true and correct copy as same appears of
record in my office. Witness my hand and seal of
office on 4-9-10.

ANA LIA RODRIGUEZ-MENDOZA



DISTRICT CLERK

By Deputy: *[Signature]*



CITATION
THE STATE OF TEXAS
CAUSE NO. D-1-GN-09-004104

C.D. HENDERSON CONSTRUCTION SERVICES, LTD.

vs.

SCOTTSDALE INSURANCE COMPANY

, Plaintiff

, Defendant

TO: SCOTTSDALE INSURANCE COMPANY
BY SERVING THE COMMISSIONER OF INSURANCE
113 GUADALUPE ST.
AUSTIN, TEXAS 78701

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION of the PLAINTIFF in the above styled and numbered cause, which was filed on DECEMBER 3, 2009 in the 200TH JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL OF SAID COURT AT OFFICE, November 07, 2009.

REQUESTED BY:
LEE HOWARD SHIDLOFSKY
GREYSTONE PLAZA
7200 NORTH MOPAC EXPRESSWAY, SUITE 430
AUSTIN, TX 78751
BUSINESS PHONE: (512) 795-0600 FAX: (866) 232-8709



Amalia Rodriguez-Mendoza
AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, TX 78701

RETURN

Time to hand on the _____ day of _____ at _____ o'clock _____ M., and executed at _____ within the County of _____ on the _____ day of _____ at _____ o'clock _____ M., by delivering to the within named _____ each in person, a true copy of this citation together with the E-FILE MANDATE NOTICE accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ _____

Sworn to and subscribed before me this the _____

day of _____



Bruce Elfant
Constable Pct. 5
Travis County, Texas

By: _____

Printed Name of Server: _____

Notary Public, THE STATE OF TEXAS

RECEIVED

County, Texas

D-1-GN-09-004104

☒ Original

☐ Service Copy

2009 DEC -8 AM 8:04

PO1 - 00953

CONSTABLE PRECINCT 5
TRAVIS COUNTY, TEXAS



FILED 12/21/2009 11:46 AM Travis County District Clerk, Amalia Rodriguez-Mendoza

Cause No. D1GN09004104

{ }
{ }
{ }In the 200 District Court
TRAVIS County

Plaintiff:

C D HENDERSON CONSTRUCTION
SERVICES LTD

Defendant:

SCOTTSDALE INSURANCE
COMPANY

Officer's Return

Came to hand December 08, 2009 at 8:04 A.M. and executed in Travis County, Texas, on December 10, 2009 at 4:12 P.M. by delivering to SCOTTSDALE INSURANCE COMPANY by delivering to MIKE GEESLIN, Commissioner of Insurance, at 333 Guadalupe, Austin, Texas, 78701, by delivering to GINGER YOCOM, designated agent for service for the Commissioner of Insurance, duplicate true copies of the citation together with accompanying duplicate copies of the Plaintiff's ORIGINAL petition WITH E-FILE MANDATE NOTICE.

FEE: \$ 70 Paid

Bruce Elfant,
Travis County Constable Precinct 5
Travis County, Texas

by: _____
Miracle Mount, Deputy





Bruce Elfant, Constable
Travis County Constable Precinct 5
1003 Guadalupe
Austin, Texas 78701
December 15, 2009

SHIDLOFSKY, LEE H
7200 N MOPAC EXPWY STE 430
AUSTIN, TX 78731

INVOICE

Cause Nbr D1GN09004104-1
Plaintiff C D HENDERSON CONSTRUCTION SER
Service Name SCOTTSDALE INSURANCE COMPANY

Service Fee 70.00
Payment Received 70.00
Balance Due 0.00

Thank you for allowing us to be of service to you in this case.

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk,
Travis County, Texas, do hereby certify that this is
a true and correct copy as same appears of
record in my office. Witness my hand and seal of
office on 4-9-10.



AMALIA RODRIGUEZ-MENDOZA

DISTRICT CLERK

By Deputy: *Jenni [Signature]*

Check the status of your civil process at
www.Constable5.com
Be sure to bookmark the ServiceCheck page



2/24/2010

TEXAS DEPARTMENT OF INSURANCE

Filed in The District Court
of Travis County, Texas

FEB 22 2010 MT

At 10:11 a.m.
Amalia Rodriguez-Mendoza, Clerk

On December 10, 2009, the Commissioner of Insurance of the State of Texas, pursuant to TEX. INS. CODE ANN., Chapter 804, received a citation and Plaintiff's Original Petition, for service on Scottsdale Insurance Company; in Cause No. D-1-GN-09-004104; styled *C.D. Henderson Construction Services, Ltd. vs. Scottsdale Insurance Company*. In the 200th Judicial District Court of Travis County, Texas.

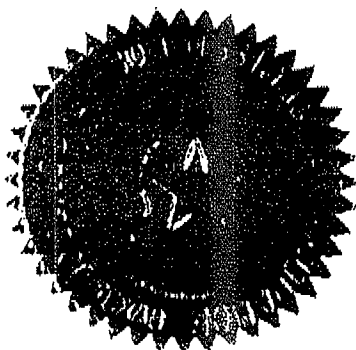
THIS IS TO FURTHER CERTIFY THAT on December 18, 2009, the above captioned documents were forwarded to Scottsdale Insurance Company; Attention: R. Lindsey McCulchan, Vice President-Legal & Asst. Secretary, at 8877 N. Gainey Center Drive, Scottsdale, AZ 85258, by certified mail, return receipt requested. The return receipt, No. 7009 1680 0000 8558 0210, was not returned to this office but the United States Postal Service website indicates the date of delivery was December 22, 2009.

IN TESTIMONY WHEREOF, WITNESS MY HAND
AND SEAL OF OFFICE AT AUSTIN, TEXAS,

THIS 17th DAY OF FEBRUARY, 2010

MIKE GEESLIN
COMMISSIONER OF INSURANCE

BY Cynthia Villarreal-Reyna
CYNTHIA VILLARREAL-REYNA
CHIEF, AGENCY COUNSEL SECTION
LEGAL & REGULATORY AFFAIRS



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TOMAS A. GONZALEZ

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December 17, 2009

Enclosures

U.S. Postal Service CERTIFIED MAIL™ RECEIPT (Domestic Mail Only: No Insurance Coverage Provided) For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Tracking # <input type="text"/> Certified Fee <input type="text"/> Return Receipt Post & Administrative Fee <input type="text"/> Insurance (Optional) Post & Administrative Fee <input type="text"/> Total Postage & Fees <input type="text"/>	Postage <input type="text"/> Fee <input type="text"/>
MAIL PS Form 3800, 10/01 Buy U.S. Savings Bonds Regularly	

2/24/2010



Texas Department of Insurance

Legal & Regulatory Affairs, Mail Code 110-1A
333 Guadalupe • P. O. Box 149104, Austin, Texas 78714-9104
512-475-1821 telephone • www.tdi.state.tx.us

February 18, 2010

Leo H. Shidlofsky.
Visser Shidlofsky, L.L.P.
7200 N. MoPac Expressway, Ste. 430
Austin, TX 78731

RE: Cause No. D-1-GN-09-004104; *C.D. Henderson Construction Services, Ltd. vs. Scottsdale Insurance Company*, In the 200th Judicial District Court of Travis County, Texas

Greetings:

Enclosed please find a certificate of service and a copy of the returned certified mail, green card, in regard to the above-captioned case.

If you have any questions, or need any further assistance, please do not hesitate to contact our office.

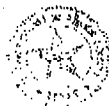
Sincerely,

Elizabeth C. Lara, Legal Assistant
Agency Counsel Section
Legal & Regulatory Affairs
(512) 463-6390

Enclosure

cc: District Clerk
Travis County
P.O. Box 679003
Austin, TX 78767

ANALIA RODRIGUEZ-MENDOZA, District Clerk,
Travis County, Texas, do hereby certify that this is
a true and correct copy as same appears of
record in my office. Witness my hand and seal of
office on 4-9-10



ANALIA RODRIGUEZ-MENDOZA
DISTRICT CLERK
By Deputy:

